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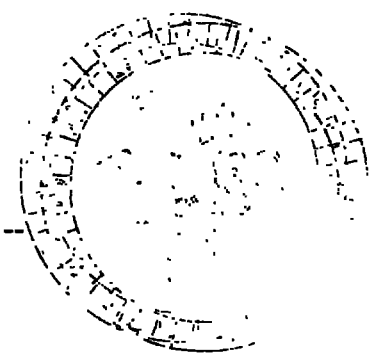
BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35383

ENTERED
Office of Proceedings

SEP 13 2010 EASTERN BERKS GATEWAY RAILROAD COMPANY --
MODIFIED RAIL CERTIFICATE

Part of
Public Record



**NOTICE OF EASTERN BERKS GATEWAY RAILROAD COMPANY FOR
MODIFIED CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
PURSUANT TO 49 C.F.R. § 1150.23**

FILED
SEP 13 2010
SURFACE
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SEP 13 2010
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TRANSPORTATION BOARD

William C. Sippel
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
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Chicago, Illinois 60606-2832
(312) 252-1500

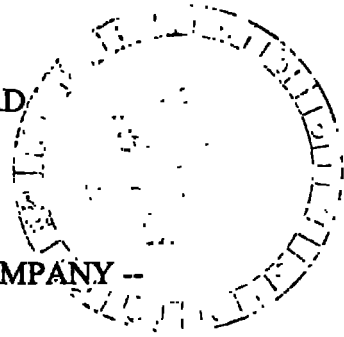
**ATTORNEYS FOR EASTERN BERKS
GATEWAY RAILROAD COMPANY**

Dated: September 10, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35383

EASTERN BERKS GATEWAY RAILROAD COMPANY --
MODIFIED RAIL CERTIFICATE



**NOTICE OF EASTERN BERKS GATEWAY RAILROAD COMPANY FOR
MODIFIED CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
PURSUANT TO 49 C.F.R. § 1150.23**

Eastern Berks Gateway Railroad Company ("EBGR") hereby files this notice for a Modified Certificate of Public Convenience and Necessity pursuant to 49 C.F.R. § 1150.23 to lease and operate a line of railroad between Pottstown and Boyertown, Pennsylvania (the "Colebrookdale Line") owned by Berks County, Pennsylvania ("the County"). The County acquired the Colebrookdale Line pursuant to 49 C.F.R. § 1150.22 after the line had been approved for abandonment in East Penn Railroad, LLC -- Abandonment Exemption -- In Berks and Montgomery Counties, PA, Docket No. AB-1020X (STB served November 18, 2008).

This Notice is related to Finance Docket No. 35384, US Rail Partners, Ltd. and Blackwell Northern Gateway Railroad Company -- Continuance in Control Exemption -- Eastern Berks Gateway Railroad Company, in which US Rail Partners, Ltd. ("USRP") and Blackwell Northern Gateway Railroad Company ("BNGR") previously filed a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) to continue in control of EBGR once EBGR leases the Colebrookdale Line and becomes a carrier.¹ BNGR is an existing Class III rail carrier operating

¹ Notice of the control exemption in Finance Docket No. 35384 was served and published in the *Federal Register* on July 15, 2010. 75 *Fed. Reg.* 41276.

in Kansas and Oklahoma. USRP controls BNGR and another existing Class III rail carrier operating in the State of Washington.

In accordance with the requirements of 49 C.F.R. § 1150.23(b), USRP submits the following information:

Information Regarding Operator: 49 C.F.R. § 1150.23(b)(1)

EBGR is a new entity formed under the laws of the Commonwealth of Pennsylvania to lease and operate the Colebrookdale Line. Its articles of incorporation are attached hereto as Exhibit A. EBGR is a direct subsidiary of BNGR and an indirect subsidiary of USRP.

The full name and address of EBGR is:

Eastern Berks Gateway Railroad Company
548 Anita Street
Des Plaines, Illinois 60016
(847) 824-1264

12 South Reading Avenue, #1A
Boyertown, PA 19512

EBGR's directors and officers are as follows:

John K. Howell, Director and President
Drew Wilson, Director and Vice President
Tammy Weart, Director and Treasurer
Scott Nauer, Director and Secretary
Stephan Gilson, Director
James Jones, Director
Thomas Klimczak, Director
David Phillips, Director
James Swim, Director
Raymond Weart, Director

Each of these directors and officers is affiliated with the two other rail carriers controlled by USRP: BNGR and Eastern Washington Gateway Railroad Company. They are

not affiliated with any other rail carriers. The address for each of EBGR's officers and directors is 548 Anita Street, Des Plaines, Illinois 60016.

While EBGR is not an existing rail carrier, its ultimate parent USRP is an established short-line railroad holding company with rail operations in the State of Washington and in the States of Kansas and Oklahoma. USRP also has established a transloading company and is affiliated with a successful locomotive leasing company. Further information is available at www.usrp-ltd.com. USRP and EBGR have more than sufficient financial responsibility to assume operation of the Colebrookdale Line.

Information About Prior Abandonment: 49 C.F.R. § 1150.23(b)(2)

The Colebrookdale Line extends from milepost 0.0 at Pottstown, Pennsylvania to milepost 8.6 at Boyertown, Pennsylvania, a distance of approximately 8.6 miles, and was previously owned and operated by East Penn Railroad, LLC ("ESPN"). In late 2008, ESPN was granted an exemption to abandon the Colebrookdale Line. East Penn Railroad, LLC -- Abandonment Exemption -- In Berks and Montgomery Counties, PA, Docket No. AB-1020X (STB served November 18, 2008) ("ESPN Abandonment").² On March 24, 2009, before abandonment of the Colebrookdale Line had been consummated, the County acquired the line pursuant to 49 C.F.R. § 1150.22.³

² ESPN Abandonment recites the full history of the Colebrookdale Line, including a prior period of government ownership before the acquisition of the line by an ESPN predecessor in 2003. ESPN Abandonment at 3.

³ The County had filed an offer of financial assistance ("OFA") to acquire the Colebrookdale Line, and the Board had set the terms and conditions for such an acquisition. East Penn Railroad, LLC -- Abandonment Exemption -- In Berks and Montgomery Counties, PA -- In the Matter of a Request to Set Terms and Conditions, Docket No. AB-1020X (STB served January 28, 2009). The County, however, acquired the line pursuant to 49 C.F.R. § 1150.22 rather than under the OFA process. See East Penn Railroad, LLC -- Abandonment Exemption -- In Berks and Montgomery Counties, PA, Docket No. AB-1020X (STB served April 9, 2009) at 1, n.2.

Dates of Operation: 49 C.F.R. § 1150.23(b)(3)

EBGR and the County have executed a Lease and Operating Agreement under which EBGR will initiate service on the Colebrookdale Line on or about September 15, 2010, and will continue such service for an initial five-year lease term and up to one additional five-year term. A copy of the Lease and Operating Agreement between EBGR and the County, dated September 2, 2010 and amended September 9, 2010, is attached hereto as Exhibit B.

Description of Service: 49 C.F.R. § 1150.23(b)(4)

The Colebrookdale Line extends from milepost 0.0 at Pottstown, Pennsylvania to milepost 8.6 at Boyertown, Pennsylvania, a distance of approximately 8.6 miles. The sole interline connection is with Norfolk Southern Railway Company at Pottstown. EBGR intends to provide rail service on the Colebrookdale Line twice weekly or on an as-needed basis.

In accordance with the provisions of its Lease and Operating Agreement with the County, EBGR will maintain railroad liability insurance coverage with limits of not less than \$5 million per occurrence and \$10 million in the aggregate and a self-insured retention of not more than \$25,000 for its operations on the Colebrookdale Line. EBGR's insurance coverage is provided by Essex Insurance Company, through BNGR, Policy No. RRGL1029-4. EBGR also will maintain standard business automobile and property loss coverage.⁴

There are no preconditions which shippers must meet to receive rail service from EBGR on the Colebrookdale Line.

Information Regarding Subsidizers: 49 C.F.R. § 1150.23(b)(5)

No entity will subsidize EBGR's operations on the Colebrookdale Line. Subject to certain exceptions agreed to by the parties following a joint inspection pursuant to the Lease

⁴ Such coverage excludes loss of or damage to the bridges on the Colebrookdale Line.

and Operating Agreement, the County is responsible for restoring the line to FRA Class 2 condition prior to EBGR's commencement of operations, and will retain continuing responsibility for the cost of certain bridge maintenance and rehabilitation.

Financial Responsibility of Subsidizers: 49 C.F.R. § 1150.23(b)(6)

Not applicable. No entity will subsidize EBGR's operations on the Colebrookdale Line.

Respectfully submitted,

By: 

William C. Sippel
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR EASTERN BERKS
GATEWAY RAILROAD COMPANY**

Dated: September 10, 2010

**PENNSYLVANIA DEPARTMENT OF STATE
CORPORATION BUREAU**

Articles of Incorporation-For Profit

(15 Pa.C.S.)

- | | |
|---|--|
| <input checked="" type="checkbox"/> Business-stock (§ 1306) | <input type="checkbox"/> Management (§ 2703) |
| <input type="checkbox"/> Business-nonstock (§ 2102) | <input type="checkbox"/> Professional (§ 2903) |
| <input type="checkbox"/> Business-statutory close (§ 2303) | <input type="checkbox"/> Insurance (§ 3101) |
| <input type="checkbox"/> Cooperative (§ 7102) | |

Name Tammy Weart		
Address 548 Anita St		
City Des Plaines,	State IL	Zip Code 60016

Commonwealth of Pennsylvania
ARTICLES OF INCORPORATION 3 Page(s)



In compliance with the requirements of the applicable provisions (relating to corporations and unincorporated associations), the undersigned, desiring to incorporate a corporation for profit, hereby states that:

1. The name of the corporation (corporate designator required, i.e., "corporation", "incorporated", "limited" "company" or any abbreviation. "Professional corporation" or "P.C"):

Eastern Berks Gateway Railroad Company

2. The (a) address of this corporation's current registered office in this Commonwealth (post office box, alone, is not acceptable) or (b) name of its commercial registered office provider and the county of venue is:

(a) Number and Street	City	State	Zip	County
6521 Old State Rd	Edinboro	PA	16412	Erie

(b) Name of Commercial Registered Office Provider	County
c/o: John K. Howell, Jr.	Erie

3. The corporation is incorporated under the provisions of the Business Corporation Law of 1988.

4. The aggregate number of shares authorized: **1000**

PA DEPT. OF STATE

JUN 28 2010

5. The name and address, including number and street, if any, of each incorporator (*all incorporators must sign below*):

Name

Address

Blackwell Northern Gateway Railroad Company 548 Anita St. Des Plaines, IL 60016

6. The specified effective date, if any: 06/24/2010
month/day/year hour, if any

7. Additional provisions of the articles, if any, attach an 8 1/2 by 11 sheet.

8. *Statutory close corporation only:* Neither the corporation nor any shareholder shall make an offering of any of its shares of any class that would constitute a "public offering" within the meaning of the Securities Act of 1933 (15 U.S.C. 77a et seq.)

9. *Cooperative corporations only: Complete and strike out inapplicable term:*

The common bond of membership among its members/shareholders is: _____

IN TESTIMONY WHEREOF, the incorporator(s)
has/have signed these Articles of Incorporation this

24th day of June 2010

Jimmy Went
Signature
AS TREASURER OF BLACKWELL
NORTHERN GATEWAY RAILROAD COMPANY

Signature

LEASE & OPERATING AGREEMENT

THIS LEASE AND OPERATING AGREEMENT (hereinafter known as "Lease Agreement"), made this 2nd day of September, 2010, between **BERKS COUNTY**, a political sub-division of the Commonwealth of Pennsylvania (hereinafter known as the "County"), having its principal offices at the Berks County Services Center, 633 Court Street, 13th Floor, Reading, PA 19601-4310 and the **EASTERN BERKS GATEWAY RAILROAD COMPANY**, a Pennsylvania corporation (hereinafter known as "EBGR") having its principal offices at 548 Anita Street, Des Plaines, IL 60016; each sometimes hereinafter individually referred to as a "Party" and sometimes collectively referred to as the "Parties."

WHEREAS, the County is the owner of the following rail line in Berks County, Pennsylvania: All of the track and right-of-way known as the Colebrookdale Line between the connection with Norfolk Southern Railway Company ("NSR") at milepost 0.0 at Pottstown, Pennsylvania to the end of the Colebrookdale Line at milepost 8.6 at Boyertown, Pennsylvania, a distance of approximately 8.6 miles (hereinafter the "Line");

WHEREAS, the County purchased the Line, pursuant to the provisions of 49 C.F.R. 1150.21 et seq., for the purpose of preserving the Line and restoring rail freight service thereon;

WHEREAS, the County desires to lease the Line to a rail common carrier duly licensed by the federal Surface Transportation Board ("STB") that will assume the obligation to provide common carrier rail freight service, provide reliable rail freight service, perform routine maintenance and repairs and use its best efforts to increase the volume of rail freight traffic on the Line;

WHEREAS, EBGR desires to lease the Line from the County and is willing to assume the obligations and responsibilities to market, operate and maintain the Line as provided herein;

WHEREAS, the Line is shown on the print marked as **Exhibit A** attached hereto and hereby made a part hereof, and together with the property described in **SECTION 1.02** is hereinafter referred to as the "Leased Premises";

WHEREAS, the Parties desire to enter into this Lease Agreement, setting forth the terms and conditions for the use, management and operation of the Leased Premises described above.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the Parties agree as follows:

1. LEASE OF THE PREMISES

1.01 The County does hereby lease to EBGR, and EBGR does hereby lease from the County, the Leased Premises described in the Recitals above. Any extension of the Line or expansion of the rail facilities owned by the County on or adjacent to the Line, except those facilities described in **SECTION 1.04** herein, shall be included in the Leased Premises herein by written amendment hereto. EBGR's lease of the Leased Premises including any expansion or extension thereof shall be for EBGR's exclusive use and possession for the purpose of providing rail transportation operations and services thereon and thereover as hereinafter described in this Lease Agreement.

1.02 The Leased Premises shall include, without limitation, right-of-way, tracks, rails, ties, ballast, all other track materials including loose materials on the Leased Premises, signals, switches, crossties, buildings, bridges, culverts, crossing devices, signs, inventories, materials and supplies, as more specifically described in **Exhibit B** attached hereto and incorporated herein, but excluding any and all (a) communications equipment and (b) items of personal property not owned by the County or not affixed to the land, including, without limitation, railroad rolling stock, locomotives, equipment, machinery or tools. Within thirty (30) days after the Commencement Date (which is defined in **SECTION 1.05**), the County shall remove all its personal property from the Leased Premises. Items not so removed shall be deemed included in the Leased Premises. EBGR expressly acknowledges that the County or its predecessors-in-title to the Leased Premises previously leased and/or licensed portions of the Leased Premises or granted easements thereover pursuant to written agreements with or conveyances to such lessees, licensees or grantees. This Lease Agreement is made subject to those leases, licenses and easements. To the extent that there exists, on the Leased Premises, property owned by such prior lessees, licensees or grantees, that property may remain on the Leased Premises to the extent permitted by the terms of the lease, license or conveyance under which it was placed on the Leased Premises.

1.03 Not later than the date of this Lease Agreement, the County shall provide EBGR with a list of all leases, licenses and other agreements relating to the Leased Premises in effect on the date of this Lease Agreement. Prior to the Commencement Date, the County, by assignment agreement substantially in the form of **Exhibit C** hereto, shall assign to EBGR such leases, licenses and other agreements, and EBGR shall assume the County's duties and obligations thereunder for the Term of this Lease Agreement. Such leases, licenses and other agreements and any leases, licenses or other agreements relating to the Leased Premises entered into by EBGR during the Term of this Lease Agreement, are hereinafter collectively referred to as "Lessee Agreements."

1.04 In the event the County's Redevelopment Authority ("Authority"), in that Authority's exclusive discretion, acquires facilities appurtenant to the Leased Premises for the loading, transfer, or unloading of freight, the following provisions shall apply:

(a) The County shall make every reasonable effort to encourage the acquiring Authority to make said facilities available to EBGR's affiliate U.S. Rail Partners Logistics

Services for its exclusive use and occupancy for the purpose of providing transloading and other services ancillary to the rail transportation operations and services described in this Lease Agreement.

(b) U.S. Rail Partners Logistics Services' use, management and operation of such facilities shall be the subject of a separate Operating Agreement between the Authority and U.S. Rail Partners Logistics Services.

(c) The County shall make every reasonable effort to encourage the Authority to include a provision in the Operating Agreement permitting U.S. Rail Partners Logistics Services to assess a fee for the services it provides to shippers and receivers that utilize such facilities, provided that Ten Percent (10%) of such fee shall be remitted to the Authority, but that such fee shall not apply to the first two hundred (200) rail cars to use the facility. Such remitted amount shall be considered part of the general funds of the Authority and shall not be placed in the Escrow Account provided for in **SECTION 5.05** herein.

(d) EBGR shall have the exclusive right to provide rail transportation service to such facilities.

1.05 The date on which EBGR commences common carrier operations on the Line pursuant to the terms of this Lease Agreement is hereinafter referred to as the "Commencement Date."

2. CONDITION OF LEASED PREMISES

2.01 The County makes no representations or warranties as to the condition of the Leased Premises as of the date of this Lease Agreement and, except as provided herein, EBGR assumes full responsibility for the Leased Premises on the date hereof "AS IS, WHERE IS".

2.02 Prior to the Commencement Date, the County, at its sole cost and expense, shall remove all trees, brush and vegetation within fifteen (15) feet of either side of the centerline and within twenty (20) feet above the top of the rail of all tracks on the Leased Premises. The Parties agree that prior to the Commencement Date, all main tracks on the Leased Premises shall be in not less than Federal Railroad Administration ("FRA") Class 2 condition and all industrial spur, team, yard, switching and side tracks shall be in not less than FRA Class 1 condition, except for any FRA exceptions identified on the punch list following the joint inspection of the Leased Premises by the Parties prior to the Commencement Date as provided in **SECTION 3**. Not later than thirty (30) days after this Lease Agreement is executed, EBGR shall obtain and provide to the County estimates from one or more responsible contractors of the cost of correcting such FRA exceptions by not later than December 31, 2010. Any such contractor shall be a rail carrier subject to the provisions of the Railway Labor Act, 45 U.S.C. 155, et seq. Provided that the cost of the corrections does not exceed One Hundred Ten Thousand Dollars (\$110,000), the

County shall bear eighty percent (80%) of the cost thereof and EBGR shall bear twenty percent (20%) of the cost thereof, subject to a maximum contribution by EBGR of Twenty-Two Thousand Dollars (\$22,000). EBGR shall submit the contractor's invoice to the County and the County shall, within thirty (30) days of receipt thereof, pay to EBGR eighty percent (80%) of the amount of such invoice. The Parties, by mutual agreement, may designate specific tracks that are not subject to the minimum track standards set forth herein.

2.03 Prior to the Commencement Date, the County, at its sole cost and expense, shall (i) complete repair of the damage to the High Street Bridge identified in the bridge study provided by the County to EBGR, and (ii) complete repair of the damage to the track in the Route 73 grade crossing.

2.04 The County shall neither encumber nor obstruct the Leased Premises in any way not otherwise permitted in or contemplated by this Lease Agreement.

2.05 The specifications for every contract for labor in excess of \$2,000 to be performed on the Leased Premises for which the County is responsible under this Lease Agreement, shall contain provisions complying with applicable Federal Law, including but not limited to the Davis-Bacon Act, 40 U.S.C. 276a, et seq.

3. INSPECTION OF LEASED PREMISES

The Parties agree to participate in a joint inspection of the Leased Premises (1) prior to the Commencement Date; and (2) at termination or expiration of this Lease Agreement, and to exchange within forty-eight (48) hours of completing the inspection, a punch list of exceptions and irregularities noted during each inspection. The Party responsible hereunder for the exception or irregularity shall be required to cure same within a reasonable period of time not to exceed thirty (30) days from the date of inspection. All disputed items shall be resolved through the dispute resolution process set forth in **SECTION 33** herein. This Section shall survive expiration or termination of this Lease Agreement hereunder until such exception or irregularity has been cured or any disputed item has been resolved.

4. TERM, EXTENSIONS AND EFFECTIVE DATE

4.01 This Lease Agreement shall become effective on the first day of the month following execution of this Lease Agreement by the Parties ("Lease Effective Date") and shall have a term of five (5) years from the Lease Effective Date and, provided that the provisions of this Lease Agreement have been fully and faithfully performed by EBGR during the preceding term, shall thereafter automatically be extended for one (1) additional five-year term unless terminated prior to the expiration thereof in accordance with the terms of this Lease Agreement. The initial five-year term and any extension thereof shall collectively be referred to herein as the "Term" of this Lease Agreement.

4.02 At least annually or sooner at the request of either Party, the Parties shall meet to discuss any modifications desired by the requesting Party to any of the provisions of this Lease Agreement, provided however, that any modifications agreed to by the Parties shall be embodied in a written amendment signed by both Parties.

4.03 Notwithstanding any other provision of this Lease Agreement, common carrier operations on the Line shall not begin until (a) the modified certificate obtained by EBGR pursuant to **SECTION 6.01** herein has become effective, (b) the joint inspection described in **SECTION 3** has been completed and the Parties have agreed that the Leased Premises meet the standards set forth in **SECTION 3**; (c) EBGR and the County have complied with the provisions of **SECTION 12**, (d) the County has complied with the provisions of **SECTION 2.02** and **SECTION 2.03**, (e) EBGR has entered into an interchange agreement and a commercial agreement with NSR, and (f) the Lessee Agreements shall have been assigned to EBGR as provided in **SECTION 1.03**.

4.04 Promptly following execution of this Lease Agreement, EBGR shall endeavor to enter into negotiations for an interchange agreement and a commercial agreement with NSR. The County may void this Lease Agreement in the event of EBGR's failure to enter into executed agreements with NSR within ninety (90) days of the Lease Effective Date. Upon EBGR's timely request the County may extend this ninety (90) day period for an additional ninety (90) days.

5. RENT AND PROOF OF PAYMENT IN LIEU OF RENT

5.01 The Parties stipulate and agree that the fair rental value of the Leased Premises is Four Thousand One Hundred Twenty-Five Dollars (\$4,125) per calendar quarter. EBGR shall have no obligation to pay rent to the County for any quarter in which EBGR does not achieve at least Fifteen Thousand Dollars (\$15,000) in gross revenue for that quarter from all of the revenue sources described in **SECTION 9.01** herein.

5.02 In lieu of rent, EBGR shall submit to the County, in a form approved by the County, a quarterly report documenting expenditures incurred by EBGR for the maintenance of the Leased Premises in the amount of not less than Four Thousand One Hundred Twenty-Five Dollars (\$4,125) per quarter, or Sixteen Thousand Five Hundred Dollars (\$16,500) per year, or Eighty Two Thousand Five Hundred Dollars (\$82,500) for the initial five-year term of this Lease Agreement, which amount is subject to proration in the event of the early termination of this Lease Agreement under **SECTION 15** herein.

5.03 EBGR's first quarterly report of payment in lieu of rent shall become due on the thirtieth (30th) day after the end of the first quarter after the Lease Effective Date, and EBGR's final proof of payment in lieu of rent shall become due on the thirtieth (30th) day after the end of the last quarter of the Term of this Lease Agreement. Notwithstanding any other provision of this Lease Agreement, this **SECTION 5.03** shall survive expiration

or termination of this Lease Agreement hereunder until EBGR's final payment of rent, or EBGR's final proof of payment in lieu of rent, has been made.

5.04 For any quarter in which EBGR incurs an obligation to pay rent under **SECTION 5.01** herein, but during which quarter EBGR fails to submit satisfactory proof of quarterly line maintenance expenditures on the Line of not less than Four Thousand One Hundred Twenty Five Dollars (\$4,125), the shortfall shall immediately become due and owing to the County as rent. For any quarter during which EBGR reports qualified expenditures of more than Four Thousand One Hundred Twenty-Five Dollars (\$4,125) in maintenance costs, the surplus amount shall be credited to the preceding quarter and next preceding quarter(s) and thence to the succeeding quarter and next succeeding quarter(s).

5.05 All monies collected by the County as rent under this Lease Agreement shall be placed in a dedicated interest bearing bank escrow account ("Escrow Account"), which account shall be the exclusive property of the County and which shall be used by the County solely and exclusively for the purpose of funding EBGR's correction of FRA exceptions as provided in **SECTION 2.02** and EBGR's rehabilitation and repair of and capital improvements to the Leased Premises. EBGR may not incur expenses against the Escrow Account without the prior written approval of the County. In the event that this Lease Agreement is terminated, any funds remaining in such Escrow Account shall remain the property of the County. Should the Leased Premises be sold, any monies remaining in the Escrow Account shall become the property of the purchaser of the Leased Premises (if EBGR or an affiliate of EBGR), or else shall remain the property of the County upon closing of title and shall remain available to apply toward the rehabilitation, repair and improvement of the Leased Premises.

6. OPERATING AUTHORITY

6.01 EBGR agrees to diligently endeavor to obtain authority from the STB to commence common carrier operations on the Line by filing a notice with the STB for a modified certificate of public convenience and necessity under 49 C.F.R. 1150.23. So long as EBGR operates the Line under such modified certificate, EBGR agrees not to terminate common carrier service without filing and serving the required sixty (60) days' notice of intent to terminate service under 49 C.F.R. 1150.24.

6.02 Once this Lease Agreement has been fully executed, the County agrees to file letters, substantially in the form of **Exhibits D-1 and D-2** attached hereto, with the Regional Administrator of the FRA giving notice of the assignment of maintenance responsibility on the track and bridges on the Line to EBGR; said letters to be filed thirty (30) days before the expected Commencement Date, or within two (2) days following execution of this Lease Agreement whichever is later.

6.03 The County requires EBGR to provide, and EBGR agrees to provide at a minimum:

(a) Twice weekly service upon request, or

(b) Service upon reasonable demand, whichever EBGR, in its sole judgment, determines is more economical to EBGR.

6.04 Notwithstanding **SECTION 6.01** herein, at such time as EBGR has handled one thousand (1000) carloads in any twelve consecutive calendar month period, EBGR may seek full authority from the STB pursuant to 49 U.S.C. 10902, or an exemption therefrom, to lease and operate the Line. In such event, the County, at the request of EBGR, shall advise the STB of the County's consent to such action.

6.05 Nothing expressed in or implied by this Lease Agreement shall be deemed to override or otherwise interfere with the County's responsibilities to its citizens, including but not limited to its responsibility to seek adverse discontinuance authority in the event EBGR fails to provide the level of service required under this Lease Agreement.

7. MAINTENANCE OF THE LEASED PREMISES

7.01 EBGR agrees to maintain the main tracks and all team, industrial, switching yard and side tracks on the Leased Premises to not less than the condition they were in on the Commencement Date as provided in **SECTION 2.02**. The Parties, by mutual agreement, may designate specific tracks that are not subject to the minimum track standards set forth herein. In the event that any portion of such tracks is, by mutual agreement of the Parties, upgraded to a standard higher than that specified herein during the Term of this Lease Agreement, EBGR shall be responsible to maintain such tracks to that higher standard throughout the remainder of the Term of this Lease Agreement.

7.02 In the course of EBGR or its contractors conducting any maintenance or emergency repairs upon, appurtenant to or otherwise affecting the Leased Premises, it shall be the non-delegable responsibility of EBGR to notify the State Utility Notification Center and to comply with all laws, rules and regulations thereof.

7.03 EBGR shall be responsible to provide the County with a quarterly Maintenance Report identifying all maintenance and inspections performed by EBGR during the previous quarter.

7.04 Responsibility for inspections, maintenance, capital reconstruction and replacements of or repairs to all bridges on the Line and any track and roadbed on the bridges, and the cost thereof during the Term of this Lease Agreement shall be as follows:

- (a) EBGR shall be responsible for selecting a qualified railroad bridge inspector to perform all bridge inspections, including inspections required under the FRA'S Bridge Safety Standards set forth at 49 C.F.R Part 237 ("Bridge

Safety Standards”), and the County shall be responsible for the cost thereof in accordance with the following schedule:

<u>Months from Lease Effective Date</u>	<u>County Share of Cost</u>
0-24 months	100%
25-36 months	75%
37-48 months	50%
49-60 months	25%
After 60 months	0%

EBGR may submit to the County invoices for such bridge inspections and the County shall pay its share of the cost as determined in this Section 7.04(a) within thirty (30) days of receipt thereof.

- (b) The County and not EBGR shall be responsible for the cost of all maintenance, capital reconstruction and replacements of or repairs to all bridges and any track and roadbed on the bridges, and the cost of all capital reconstruction and replacements of or repairs to the Leased Premises necessitated by: (a) man-made or nature disasters against which insurance is not normally available; (b) non-routine maintenance of the structural integrity of the infrastructure of the Leased Premises; and (c) all other items in the nature of major capital improvements of the Leased Premises including rehabilitating crossings. The County and not EBGR shall also be responsible for the cost of compliance with the FRA's Bridge Safety Standards set forth at 49 C.F.R. Part 237 regarding bridge ratings and any rehabilitation, reconstruction, replacements or repairs required thereunder once such standards become effective. EBGR shall, upon written approval by the County of EBGR's plans for such work, undertake to perform at the County's sole cost and expense such reconstruction, replacements, and repairs and such work as necessary to comply with the FRA's Bridge Safety Standards within a reasonable time after the need to do so arises. EBGR may submit to the County invoices for such work on a progressive billing basis and the County shall pay each such invoice within thirty (30) days of receipt thereof.

7.05 Except as set forth in **SECTION 7.04**, EBGR and not the County shall be responsible for the cost of all routine maintenance (including the cost of replenishing ballast, replacing track material and signal components) necessary to maintain the tracks on the Leased Premises to the minimum standards specified in **SECTION 2.02** and to comply with all rules and regulations of the FRA.

8. REPORTS AND AUDIT OF RECORDS

8.01 EBGR shall diligently prepare and file all reports, returns, and information required in connection with EBGR's operation of the Leased Premises by any and all

federal, state and local governmental regulatory and taxing authorities with jurisdiction over the Leased Premises. EBGR shall also submit to the County a copy of EBGR's annual report to the Pennsylvania Secretary of State.

8.02 EBGR shall provide the County with a detailed written report on rail traffic on the Line at least quarterly.

8.03 EBGR shall provide the County with written quarterly and annual reports detailing the accounting of revenues and expenses generated in the operation of the Leased Premises. EBGR shall utilize generally accepted accounting procedures for recording said revenues and expenses.

8.04 EBGR shall provide the County with an annual written report on EBGR's efforts to increase the volume of freight traffic on the Line.

8.05 The County reserves the right to audit EBGR's statements, and EBGR agrees to make its records available for auditing purposes during normal business hours on no less than three (3) business days advance notice.

8.06 EBGR shall provide the County with a copy of any and all reports generated or issued by third parties which pertain to the Leased Premises within three (3) business days of EBGR's receipt of such materials. EBGR shall further provide the County with a copy of any and all reports regarding track, bridge crossing, and signal inspections conducted by the Pennsylvania Department of Transportation, the FRA and any other agency having jurisdiction, within three (3) business days of EBGR's receipt of such materials.

8.07 EBGR shall indemnify and hold the County harmless against any penalty and/or damages incurred by the County resulting from EBGR's failure to file or maintain any such reports, returns, or information. The County shall likewise indemnify and hold EBGR harmless against any penalty and/or damages incurred by EBGR resulting from the County's failure to file any such reports, returns, or information.

8.08 Pursuant to Section 708 (b) (11) of the Pennsylvania Right-to-Know Law, the County shall hold in confidence and shall not disclose, except as may be ordered by a Court of competent jurisdiction, any confidential proprietary information contained in any report provided to the County by EBGR.

9. COMPENSATION

9.01 As compensation for all services rendered by EBGR in operating the Line, EBGR shall collect, for its use and benefit, the revenues to EBGR generated by any lawful use of the Leased Premises, which revenues shall include, but shall not be limited to:

(a) Revenue derived from charging customers for the transportation of freight on the Line including any applicable fuel or other surcharges;

(b) Revenue derived from connecting carriers, including, but not necessarily limited to: handling line charges, switching allowances, intra-line moves, and Rule 11 charges.

(c) Revenue derived from charging customers for special non-freight rail movements;

(d) Revenue derived from demurrage or rail car storage;

(e) Revenue derived from any rail passenger service;

(f) Revenue derived from licenses and sub-leases pursuant to **SECTION 11**;

(g) Revenue derived from providing warehousing, transloading or distribution services; and

(h) Proceeds of any subsidy paid by shippers or receivers on the Line pursuant to 49 C.F.R. 1150.22.

9.02 EBGR shall be prohibited from the following acts:

(a) Salvaging any part of the rail line without the prior written approval of the County, which approval may be withheld at the discretion of the County; or

(b) Entering into any sub-leases involving the use, occupancy or operation of the Line by a third party without the prior written approval of the County, which approval may be withheld at the discretion of the County, provided, however, that EBGR may enter into the licensing agreements described in **SECTION 11.01**.

10. RAIL PASSENGER SERVICE

10.01 EBGR shall be permitted, but shall not be required, to provide rail passenger service including tourist or excursion service on the Line.

10.02 Any and all additional maintenance or operating expenses including liability insurance and indemnification of the County for its liability shall be borne in the entirety by EBGR or the sponsor of the rail passenger service.

11. SUB-LEASES AND LICENSES

11.01 Except where prohibited by **SECTION 11.04**, EBGR shall have the exclusive right, without the County's prior consent, to enter into licenses with third parties for use of the Leased Premises. Any sub-lease of the Leased Premises, including any sub-lease for billboards, and any license for use of the Leased Premises exceeding three (3) years in duration, shall require the County's prior written consent, which consent shall not be unreasonably withheld.

11.02 On or before the Commencement Date,

(a) The County shall assign to EBGR all of its interest in that certain Service Agreement dated November 5, 2009 between the County and ReITEK, LLC, a property management firm currently managing and collecting income from existing Lessee Agreements.

(b) EBGR shall remit to the County One Hundred Percent (100%) of the proceeds received from the Lessee Agreements, net of reasonable fees or charges owed to ReITEK, LLC or a successor third party property management firm, for placement in the Escrow Account provided for in **SECTION 5.05**.

11.03 EBGR shall be solely responsible for billing and collecting revenue from its licensees and permitted sub-lessees; and EBGR shall deposit the County's portion of all such revenue into the Escrow Account.

11.04 EBGR is prohibited from sub-leasing its right to operate the Line without the County's prior written consent. EBGR is further prohibited from entering into licenses or sub-leases for the use of the Leased Premises for any use which would be inconsistent with the primary use of the Leased Premises as a railroad line.

12. INSURANCE

12.01 During the Term of this Lease Agreement, EBGR shall obtain and maintain the following insurance coverage relating to the Leased Premises:

(a) Railroad liability insurance coverage in an amount not less than Five Million Dollars (\$5,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the aggregate with a self-insured retention of not more than Twenty-Five Thousand Dollars (\$25,000) per occurrence. Such liability insurance shall include liability coverage for injury to or death of any persons whomsoever, and for damage to or destruction of any property whatsoever, except property specified in **SECTION 12.01(b)**.

(b) All risks property insurance coverage in an amount not less than One Hundred Thousand Dollars (\$100,000) per occurrence with a self-insured retention of not more than Ten Thousand Dollars (\$10,000) per occurrence to repair, replace or

restore any loss or damage for which EBGR is liable under **SECTION 22** herein to tangible property upon the Leased Premises, including all tracks, roadbeds, non-industry owned side tracks and spurs, but excluding bridges and any abutments, piers or approach structures related to a bridge and any track and roadbed on the bridges, located on the Leased Premises.

(c) Liability coverage for bodily injury to railroad employees arising under the Federal Employers Liability Act, 45 U.S.C. 51 et seq. ("FELA").

(d) Business automobile insurance coverage with a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence and which shall include coverage for, but not be limited to bodily injury and property damage and any and all vehicles owned, used or hired by EBGR.

12.02 During the Term of this Lease Agreement, the County shall obtain and maintain the following insurance coverage relating to the Leased Premises:

(a) Liability insurance coverage in an amount not less than Five Million Dollars (\$5,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the aggregate with a self-insured retention of not more than Twenty-Five Thousand Dollars (\$25,000) per occurrence. Such liability insurance shall include liability coverage for injury to or death of any persons whomsoever, and for damage to or destruction of any property whatsoever, except property specified in **SECTION 12.01(b)**.

(b) All risks property insurance coverage with a self-insured retention of not more than Fifty Thousand Dollars (\$50,000) per occurrence to repair, replace or restore any loss or damage to the bridges, including any abutments, piers and approach structures related to a bridge and any track and roadbed on the bridges, located upon the Leased Premises.

12.03 Additional requirements:

(a) If liability insurance coverage is written on a "claims-made and reported" basis, the Parties shall maintain coverage in force for a minimum of three (3) years after expiration, cancellation or termination of this Lease Agreement.

(b) The Parties shall name one another and their respective officers, agents, employees, servants and assigns as additional insureds on their respective policies of insurance.

(c) Each insurance policy of a Party shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to endeavor to notify the other Party to this Lease Agreement in writing at least thirty (30) days prior to any cancellation of such policy. Such cancellation provision shall be indicated on the certificate of insurance. Each Party shall be responsible for providing notice of any such cancellation to its employees, servants and assigns shown as additional insureds on such policy.

Each Party shall provide at least thirty (30) days written notice to the other Party prior to any modification of any policy.

(d) All policies (applying to coverage listed above) shall exclude punitive damages and the certificates of insurance shall reflect that such exclusion exists.

(e) Each Party agrees to waive its right of recovery against the other Party for all claims and suits against the other Party. In addition, all insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against any Party to this Lease Agreement for all claims and suits. Each Party further waives its right of recovery, and its insurer(s) also waive its (their) right of subrogation against the other Party to this Lease Agreement for loss of the Party's owned or leased property or property under the other Party's care, custody or control.

(f) Neither Party shall be responsible for the other Party's deductible, self-insured retention or other financial responsibility under the other Party's insurance policies. Neither Party shall increase its self-insured retention under any insurance coverage required in this Lease Agreement without the prior written consent of the other Party.

(g) Prior to EBGR commencing operations under this Lease Agreement, the Parties shall furnish to one another acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage, endorsements, and amendments.

(h) Each Party represents that the provisions of this **SECTION 12** have been thoroughly reviewed by its insurance agent(s)/broker(s) or other persons with requisite knowledge and authority, who have been instructed to procure the insurance coverage required in this **SECTION 12**. Not more frequently than once every five (5) years, the Parties by mutual agreement may modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

(i) If either Party hires any contractor to perform any of its obligations under this Lease Agreement, such Party shall require such contractor to provide and maintain insurance coverage equivalent to that required of such Party, naming each of the Parties as an additional insured, and such contractor shall release, defend and indemnify the other Party to the same extent and under the same terms and conditions as the Parties are required to release, defend and indemnify one another herein, provided however, that any contractor retained by either Party to perform work on the Leased Premises shall be required to obtain and maintain workers compensation insurance, unless such contractor is subject to FELA and maintains liability coverage as set forth in **SECTION 12.01(c)**.

(j) Failure to provide evidence of insurance as required by this **SECTION 12** shall entitle the other Party to terminate this Lease Agreement immediately. Acceptance by a Party of a certificate of insurance from the other Party that does not

comply with this **SECTION 12** shall not operate as a waiver of the other Party's obligations hereunder.

(k) In the event of a claim or lawsuit involving either Party or both Parties arising out of this Lease Agreement, each Party shall make available to the other Party any required policy covering such claim or lawsuit.

(l) Any insurance policy obtained by a Party to satisfy its obligations hereunder shall be written by a reputable insurance company with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the Commonwealth of Pennsylvania.

(m) By virtue of obtaining insurance coverage as set forth above, the Parties are in no way signifying their intent or evidencing any alternative or dual employment relationship with one another. Rather, the Parties agree: (1) neither Party has any right to direct or control the other Party's employees with respect to the physical conduct or the performance of services; (2) neither Party supervises, nor has the right to supervise, details of the other Party's employees' work or the manner in which such work is accomplished; (3) neither Party retains any control over the details of the other Party's employees' work; and (4) neither Party has any right to select, hire, train, discipline or discharge the other Party's employees.

13. UTILITIES

EBGR shall pay, when due, all charges for telecommunications, water, sewer, gas and electric service arising from EBGR's use and operation of the Leased Premises.

14. LIABILITY FOR TAXES

14.01 EBGR shall be solely liable for all income taxes or other government levies imposed upon EBGR's operating revenues derived from the use of the Leased Premises.

14.02 The County shall be solely responsible for all property taxes, levies and other governmental assessments imposed upon the Leased Premises.

15. TERMINATION

15.01 Subject to the provisions of this **SECTION 15**, this Lease Agreement may be terminated as follows:

(a) By either Party on or at any time prior to the Commencement Date if any substantive condition unacceptable to the County or to EBGR is imposed in the regulatory approvals or exemptions contemplated by **SECTION 6** of this Lease Agreement for EBGR's lease and operation of the Leased Premises;

(b) By either Party at any time prior to the Commencement Date if EBGR is unable to reach an interchange agreement and a commercial agreement with NSR acceptable to EBGR pertaining to rail freight traffic moving via the Line as required by **SECTION 4.04**.

(c) By either Party upon the occurrence of a Default by the other Party which is not cured as provided in **SECTION 26**;

(d) If EBGR is operating the Line pursuant to a modified certificate of public convenience and necessity under 49 C.F.R. 1150.23, by EBGR immediately upon expiration of the sixty (60) days' notice of intent to terminate service on the Line required under 49 U.S.C. 1150.24, provided that EBGR shall have provided a copy of such notice to the County at the time it is given.

(e) If EBGR is operating the Line pursuant to STB authority under 49 U.S.C. 10902, or on exemption therefrom, by EBGR following EBGR's obtaining all necessary regulatory approvals or exemptions to permit EBGR to discontinue rail service on the Line.

(f) By EBGR upon written notice to the County in the event that EBGR is no longer able to interchange traffic with NSR or its successor at Pottstown, Pennsylvania, or at an alternate location satisfactory to EBGR, or NSR terminates its commercial agreement with EBGR.

(g) By EBGR if the County exercises its option in **SECTION 18.02(b)** to not make the financial provision described therein.

(h) By both Parties by written agreement.

(i) By the County if within six (6) months of the date of this Lease Agreement, EBGR fails to obtain authority from the STB as required under **SECTION 6.01**.

15.02 In the event of termination as provided in **SECTION 15.01**, future rent shall be abated as of the date this Lease Agreement is terminated and no equity in title shall be deemed to have been accumulated by EBGR. EBGR shall be liable for, and pay to the County in accordance with the provisions of **SECTION 5.04**, all rent accruing prior to the date of such termination.

15.03 In the event this Lease Agreement is terminated, EBGR shall cooperate with the County and/or its designee in obtaining operating rights over the Line equivalent to those enjoyed by EBGR. EBGR shall reassign all Lessee Agreements in effect on the date of termination of this Lease Agreement by an assignment agreement materially on the same terms as **Exhibit C** hereto.

15.04 If EBGR is operating the Line pursuant to a modified certificate of public convenience and necessity under 49 C.F.R. 1150.23, in the event of termination of this Lease, EBGR shall, within seven (7) days of delivery or receipt of notice of termination, provide the sixty (60) days' notice of intent to terminate service on the Line required under 49 C.F.R. 1150.24. Any termination of this Lease Agreement pursuant to **SECTION 15.01** (b), (c), (d), (e), (f) or (g) shall not become effective until the sixty (60) days' notice required under 49 C.F.R. 1150.24 has expired. If EBGR is operating the Line pursuant to full authority from the STB pursuant to 49 U.S.C. 10902, or an exemption therefrom, upon receiving notice of termination, EBGR shall promptly initiate discontinuance proceedings before the STB and, upon receiving STB approval, shall peacefully vacate the Line. In the event EBGR fails to provide such sixty (60) days' notice, the County shall have the right to initiate discontinuance proceedings before the STB in EBGR's name, and EBGR shall cooperate with the County and its third-party operator designee in arranging for the transfer of the common carrier obligation in an orderly manner so as not to disrupt service to customers on the Line. In such circumstances, the County, or its designee at County's discretion, may immediately begin operation over the Leased Premises if EBGR fails to comply with the requirements of **SECTION 6.03** herein.

15.05 Termination of this Lease Agreement hereunder shall not relieve or release either Party from any obligation incurred hereunder prior to such termination.

16. RETURN OF LEASED PREMISES

Upon the expiration or termination of this Lease Agreement, EBGR shall promptly remove all of its personal property and return the Leased Premises to the County in such condition as the Leased Premises were in on the Lease Effective Date, or to which the Leased Premises have been improved during the Term of this Lease Agreement, normal wear and tear excepted, provided however, that EBGR need not return the Leased Premises to the County in such condition if, at the time of such expiration or termination, the Line is inoperable due to the County exercising its option in **SECTION 18.02(b)** or because the County is unwilling to fund reconstruction or renovation as provided in **SECTION 27**. EBGR's liability under this Section, if any, shall be limited to the reasonable cost of restoring the Leased Premises to its prior condition.

17. COMPLIANCE WITH GOVERNING LAW

EBGR shall comply with all laws, statutes, ordinances, rules, orders, regulations and requirements of the federal, state and local governments that are applicable to the Leased Premises and EBGR's operation of the Line. EBGR shall not use or permit the Leased Premises to be used for any illegal purpose.

18. NOTICE TO EBGR OF COUNTY'S INTENT TO INSPECT AND REPAIR

18.01 The County, its agents, or representatives shall have the right to enter upon the Leased Premises during normal business hours upon three (3) business days advance written notice to EBGR to inspect and examine the Leased Premises. EBGR's consent to provide access shall not unreasonably be withheld. EBGR has the right to be present for any inspection.

18.02 Following inspection, the County, its agents, or representatives shall notify EBGR of any necessary maintenance or repairs. Unless otherwise agreed between the Parties, EBGR shall have the responsibility for completing such maintenance or repairs in a timely and efficient manner.

(a) If the cost of such maintenance or repairs is EBGR's obligation pursuant to this Lease Agreement, and should EBGR fail, after reasonable notice and opportunity, to undertake such repairs, the County may make such repairs as necessary for the proper use, safety and preservation of the Leased Premises. The County may charge all reasonable repair costs to EBGR irrespective of whether the repair costs exceed EBGR's remaining rental obligations under this Lease Agreement; although the repair costs shall be credited to EBGR's account up to the limit of EBGR's remaining rental obligations under this Lease Agreement.

(b) If the cost of such maintenance or repairs is not EBGR's obligation pursuant to this Lease Agreement, the County shall within a reasonable time make or secure such financial provision as appropriate for such maintenance or repairs. The County shall however have the option of refusing to make such financial provision.

18.03 Nothing contained in this Section shall be deemed a covenant by the County, and should not be construed as creating an obligation on the part of the County, to make any inspection or repairs.

18.04 Nothing contained in this Section shall be deemed to operate to override, limit or otherwise restrict the County's right to enforce any law or protect public safety.

19. NOTICE OF CASUALTY

EBGR shall give immediate notice to the County of any fire damage, personal injury, property damage or other casualty occurring upon the Leased Premises.

20. ALTERATIONS AND IMPROVEMENTS TO THE LEASED PREMISES

20.01 Except as otherwise provided herein, EBGR shall make no alterations, additions, obstructions, encumbrances or improvements to the Leased Premises without

the prior written consent of the County, which consent shall not be unreasonably withheld.

20.02 Additions and improvements to the Leased Premises made by the County, or pre-approved by the County and made by EBGR at the County's expense, shall become the property of the County at the termination of this Lease Agreement.

20.03 Additions and improvements pre-approved by the County and made by EBGR at its own expense may be removed from the Leased Premises provided the removal process would not impair the utility of the Leased Premises. Upon termination of this Lease Agreement, the County or its designee may purchase such improvements at the net depreciated value of such improvements; provided however, that if EBGR receives and is willing to accept a bonafide offer from a third party to purchase any such improvement(s), EBGR shall notify the County and the County shall have the right to purchase the said improvement(s) for the same price offered to EBGR within sixty (60) days of the County's receipt of such notice, with the County being allowed an additional thirty (30) days' grace period to consummate the transaction provided the County has timely exercised its right to notify EBGR of its intent to purchase.

20.04 The County shall reimburse EBGR for the net depreciated value of pre-approved additions and improvements made by EBGR at EBGR's expense which cannot be removed without damaging the Leased Premises at cost less depreciation. The net depreciated value shall be determined in accordance with the tax laws of the United States and the regulations of the Internal Revenue Service pertaining to railroad property.

20.05 EBGR shall not make any alterations to the Leased Premises that are inconsistent with the primary use of the Leased Premises as a railroad line in accordance with this Lease Agreement.

21. LIMITATIONS ON SIGNS AND STRUCTURES

Beginning on the Lease Effective Date and notwithstanding the provisions of **SECTION 11.01** herein, EBGR shall not place nor permit to be placed any signs or structures of third parties unrelated to the provision of railroad service or railroad operations on the Leased Premises, including but not limited to billboards, without the prior written consent of the County, which consent shall not unreasonably be withheld. Any such third party signs or structures permitted by the County shall at all times conform to all applicable laws, ordinances or regulations. Notwithstanding the foregoing, EBGR may without the consent of the County, place and maintain such signs as are necessary for marketing transportation and related services on the Line, for the safe operation of railroad service or to the operation of grade crossings, bridges, and other facilities on the Leased Premises.

22. RELEASE, HOLD HARMLESS & INDEMNIFICATION

22.01 Environmental Laws. During the Term of this Lease Agreement, EBGR will comply with all federal, state, and local laws, rules, regulations, and ordinances controlling air, water, noise, hazardous waste, solid waste, and other pollution or relating to the storage, transport, release, or disposal of hazardous materials, substances, waste, or other pollutants. EBGR, at its own expense, shall make all modifications, repairs, or additions to the Leased Premises, install and bear the expense of any and all structures, devices, or equipment, and implement and bear the expense of any remedial action which may be required under any such laws, rules, regulations, ordinances, or judgments as a result of EBGR's use, occupancy or maintenance of the Leased Premises hereunder. For purposes of **SECTION 22**, acts or omissions of any third party under the Lessee Agreements assigned by the County to EBGR hereunder, shall not be deemed a result of EBGR's use, occupancy or maintenance of the Leased Premises. During the Term of this Lease Agreement, EBGR will properly dispose of all wastes of any kind, whether hazardous or not, deposited on the Leased Premises.

22.02 Environmental Indemnity.

(a) The County for itself, its successors and assigns, shall, to the maximum extent permitted by law, waive, release, remise, acquit, discharge, protect, indemnify, defend and save harmless EBGR, its affiliates, their employees, agents, officers, successors and assigns, from and against any and all suits, actions, causes of action, legal or administrative proceedings, claims, demands, fines, punitive damages, losses, costs, liabilities and expenses, including attorney's fees (collectively, "Costs"), in any way arising out of or connected with a known or unknown, physical or environmental condition of the Leased Premises occurring prior to the Lease Effective Date or after the date of expiration or termination of this Lease Agreement as provided in this Lease Agreement ("Lease Termination Date"), or arising from the acts or omissions of any third party on an adjacent property or any third party under the Lessee Agreements assigned by the County to EBGR hereunder (including, without limitation, any contamination in, on, under or adjacent to the Leased Premises by any hazardous or toxic substance or material), or any federal, state or local law, ordinance, rule or regulation applicable thereto (including, without limitation, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Resource Conservation and Recovery Act), and including, without limitation, personal injury to or death of persons whomsoever including employees, agents or contractors of the County, EBGR or any third party, and damage to property of the County, EBGR or any third party.

(b) EBGR for itself, its successors and permitted assigns, shall, to the maximum extent permitted by law, waive, release, remise, acquit, discharge, protect, indemnify, defend and save harmless the County, its constituent agencies, their employees, agents, officers, successors and assigns, from and against any and all Costs, in any way arising out of or connected with a known or unknown, physical or

environmental condition of the Leased Premises arising from EBGR's use, occupancy or maintenance of the Leased Premises between the Lease Effective Date and the Lease Termination Date (including, without limitation, any contamination in, on, under or adjacent to the Leased Premises by any hazardous or toxic substance or material), or any federal, state or local law, ordinance, rule or regulation applicable thereto (including, without limitation, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Resource Conservation and Recovery Act), and including, without limitation, personal injury to or death of persons whomsoever including employees, agents or contractors of the County, EBGR or any third party, and damage to property of the County, EBGR or any third party. The foregoing provision shall apply only if the Costs are incurred as a result of EBGR's use of the Leased Premises during the Term of this Lease Agreement or any hold over period and shall include all Costs incurred that are attributable to a EBGR use which exacerbates a preexisting condition on the Leased Premises and all Costs attributable to the actions of any contractor, agent or invitee of EBGR during the Term of this Lease Agreement or any hold over period.

22.03 General Indemnity.

(a) EBGR shall protect, defend, save harmless, indemnify and reimburse the County from and against any and all Costs incurred by or assessed against the County and/or its constituent agencies, due to or resulting from personal injuries, death, or property loss or damage arising from EBGR's use, occupancy or maintenance of the Leased Premises between the Lease Effective Date and the Lease Termination Date, or as a result of EBGR's breach of, or from its failure to comply with, any provisions of this Lease Agreement, even if the Costs (i) result in whole or in part from a violation or alleged violation of any federal, state or local law or regulation by the County or the County's agents, including, but not limited to, the Federal Employers' Liability Act ("FELA"), the Safety Appliance Act, the Locomotive Inspection Act, the Occupational Safety And Health Act ("OSHA") or (ii) is caused in whole or in part by the negligence *per se*, or strict liability of the County; provided, however, that all Costs including costs for any personal injuries, death or property loss, or damages arising in connection with toxic waste or environmental conditions, shall be governed by the provisions of **SECTIONS 22.01 and 22.02.**

(b) Notwithstanding the provisions of paragraph (a) above, the County shall defend, hold harmless, indemnify and reimburse EBGR from and against all liabilities caused by the County's negligence, including gross negligence, illegal conduct or criminal conduct, or by third parties over whom EBGR exercises no control. Additionally, the County shall protect, defend, hold harmless, indemnify and reimburse EBGR from and against any Costs incurred by EBGR arising from or relating to any license or other third party rights granted by the County over the Leased Premises.

22.04 Notice of Violations. EBGR will promptly furnish the County with written notice of any and all (i) FRA violations, (ii) OSHA violations, (iii) releases of hazardous wastes or substances of which it becomes aware which occur during the Term of this

Lease Agreement whenever such releases are required to be reported to any federal, state, or local authority, and (iv) alleged water or air permit condition violations, and (v) any notification received by EBGR alleging any violation of any state, federal or local statute, ordinance, ruling, order or regulation pertaining to environmental protection and/or hazardous material, handling, transportation or storage. To the extent practicable, such written notice will identify the substance released, the amount released, and the measures undertaken to clean up and remove the released material and any contaminated soil or water, will identify the nature and extent of the alleged violation and the measures taken to eliminate the violation, and will certify that EBGR has complied with all applicable regulations, orders, judgments or decrees in connection therewith, or the date by which such compliance is expected. EBGR will also provide County with copies of any and all reports made to any governmental agency which related to such releases or such alleged violations during the Term of this Lease Agreement.

23. ASSIGNABILITY

23.01 This Lease Agreement shall inure to the benefit of and be binding upon the successors of the County and EBGR, and the permitted assigns of EBGR, subject to the limitations hereinafter set forth. EBGR shall not assign, mortgage, or hypothecate this Lease Agreement, nor sublet or sublease any part of the Leased Premises, nor permit the Leased Premises to be occupied or used for any purpose other than those uses contemplated herein, except as: (a) may be agreed upon by the County in writing; (b) may result from condemnation of all or part of the Leased Premises; or (c) may result from the legally enforceable rights of others to have easements on the Leased Premises. Nothing herein shall prohibit assignment of this Lease Agreement within EBGR's corporate family.

23.02 Any sale of the Leased Premises during the Term of this Lease Agreement or any extensions thereof by the County to a party other than EBGR shall be conditioned upon the assignment of the County's rights hereunder to, and the assumption of the County's obligations hereunder by, the purchaser who shall agree in writing to be bound thereby.

24. CORPORATE GUARANTEE

U.S. Rail Partners Ltd., an Illinois corporation, and Blackwell Northern Gateway Railroad Company, an Oklahoma corporation, shall serve as guarantors of EBGR's obligations and responsibilities under this Lease Agreement, and such guarantors agree to be jointly and severally liable for EBGR's debts and liabilities under this Lease Agreement. The requirements of this Section shall expire on the fifth anniversary of the Lease Effective Date and shall not apply to any subsequent extension of the Term of this Lease Agreement, provided however, that expiration shall not relieve or release U.S. Rail Partners Ltd. or Blackwell Northern Gateway Railroad Company from any obligation incurred under this Section prior to such expiration.

25. WAIVER

The failure of either Party hereto to enforce at any time any of the provisions of this Lease Agreement or to exercise any right or option which is herein provided shall in no way be construed to be a waiver of such provision(s) as to the future, nor in any way to affect the validity of this Lease Agreement or any part hereof or the right of either Party to thereafter enforce each and every such provision and to exercise any such right or option. No waiver of any breach of this Lease Agreement shall be held to be a waiver of any other or subsequent breach.

26. DEFAULT

26.01 The following acts or omissions of EBGR if not cured within the applicable time periods set forth in this **SECTION 26** shall constitute a Default on the part of EBGR:

(a) Failure by EBGR to make payments of rent, failure to submit satisfactory proof of payments in lieu of rent, or failure to make payments of other amounts due and payable for any reason arising in connection with this Lease Agreement or EBGR's operation over the Leased Premises, including but not limited to those obligations specified in **SECTIONS 5.02, 5.03, 5.04, 11.02, 11.03, 13, 18.02, 22.03(a) and 26.03;**

(b) Filing by EBGR of a petition for bankruptcy, reorganization or arrangement by EBGR of an assignment for the benefit of creditors, or if this Lease Agreement shall pass to another party by virtue of any court proceeding or operation of law, or be placed in receivership, or otherwise should EBGR avail itself of the protection afforded pursuant to the Bankruptcy Reform Act or any similar proceeding, which petition is not dismissed within thirty (30) days;

(c) Failure by EBGR to comply with the maintenance requirements of **SECTION 7;**

(d) Failure of EBGR to comply with the audit requirements of **SECTION 8.05;**

(e) Failure of EBGR to comply with the insurance requirements of **SECTION 12;**

(f) Failure by EBGR to comply with the reporting requirements of **SECTIONS 5.03, 7.03, 8 and 22; or**

(g) Failure by EBGR in the performance of any terms, conditions, or covenants contained herein, which default results in the disruption of the railroad services as

provided for in this Lease Agreement and such failure continues for thirty (30) days following receipt of written notice as provided for hereunder.

- (h) Failure by EBGR to obtain operating authority pursuant to **SECTION 6.01**;
- (i) Failure by EBGR to provide the minimum acceptable level of service required in **SECTION 6.03**;
- (j) EBGR littering the right of way;
- (k) EBGR conducting operations on the Leased Premises in violation of FRA regulations;
- (l) EBGR conducting illegal activities on the Leased Premises; or
- (m) EBGR engaging in any of the acts prohibited by **SECTIONS 9.02 and 11.05**.

26.02 The following acts or omissions of the County, if not cured within the applicable time periods set forth in this **SECTION 26**, shall constitute a Default on the part of the County:

(a) Failure by the County to make any payments or other amounts due and payable for any reason arising in connection with this Lease Agreement and such failure continues for thirty (30) days following receipt of written notice as provided hereunder, including, but not limited to, those obligations specified in **SECTIONS 2.02, 7.04, 20.04, 22.03(b), 26.03 and 27**; or

(b) Failure by the County in the performance of any terms, conditions, or covenants contained herein, which Default results in the impairment of EBGR's ability to provide the railroad services as provided for in this Lease Agreement, and such failure continues for thirty (30) days following receipt of written notice as provided for hereunder, including, but not limited to, those obligations specified in **SECTIONS 2.02, and 7.04**.

26.03 Upon the occurrence of any Default hereunder or breach of any term hereof, the injured Party shall notify the defaulting or breaching Party in writing and specify the Default or breach and what corrective action is desired to cure it. If, upon the expiration of thirty (30) days from the receipt of said notice, the Default or breach has not been cured (or, if such Default or breach cannot be cured within thirty (30) days, steps have not been taken to effect such cure and pursued with all due diligence within said period) and such Default or breach is material, the injured Party shall have the right, at its sole option, to cure such Default or breach if possible and be reimbursed by the defaulting or breaching Party for the cost thereof, including any and all reasonable attorney's fees, and for any reasonably foreseeable consequential damages. Nothing herein shall prevent the injured Party from resorting to any other remedy permitted under this Lease Agreement or at law or equity, including seeking

damages and/or specific performance, as shall be necessary or appropriate to make the injured party whole in the premises. Failure of the injured Party to demand or enforce a cure for a Default or breach in one instance shall not be deemed a waiver of its right to do so for any subsequent Default or breach by the defaulting or breaching Party.

27. FORCE MAJEURE

EBGR shall have no obligation to provide service over any portion of the Leased Premises when prevented from so doing as a result of any act of nature, public authority, strikes, riots, civil disturbance, labor disputes, threats or acts of terrorism, or threats or acts of war; provided however, EBGR shall use reasonable best efforts to take whatever action is reasonably necessary or appropriate to resume operations at the earliest reasonable date unless damage or destruction of the Leased Premises requires major reconstruction or renovation, in which event EBGR will exercise reasonable diligence in performing such reconstruction or renovation at County's expense as provided herein. In the event that the County is unwilling or unable to fund such reconstruction or renovation, EBGR may terminate this Lease Agreement pursuant to **SECTION 15.01(d) or (e)**, whichever is applicable.

28. EMINENT DOMAIN

28.01 In the event that at any time during the Term of this Lease Agreement the whole or any part of the Leased Premises shall be taken by any lawful power by the exercise of the right of eminent domain for any public or quasi-public purpose, the following provisions shall be applicable:

28.02 If such proceeding shall result in the taking of the whole or a portion of the Leased Premises which materially interferes with EBGR's use of the Leased Premises for railroad purposes, EBGR shall have the right, upon written notice to the County, to terminate this Lease Agreement in its entirety. In that event, and subject to any necessary regulatory notices, approvals or exemptions, this Lease Agreement shall terminate and expire on the date title to the Leased Premises vests in the condemning authority.

28.03 If such proceeding shall result in the taking of less than all of the Leased Premises which does not materially interfere with EBGR's use of the Leased Premises for railroad purposes, then this Lease Agreement shall continue for the balance of its Term as to the part of the Leased Premises remaining, without any reduction, abatement or effect upon the rent or any other sum or charge to be paid by EBGR under the provisions of this Lease Agreement.

28.04 Except as otherwise expressly provided in this Section, the County shall be entitled to any and all funds payable for the total or partial taking of the Leased Premises without any participation by EBGR; provided, however, that nothing contained herein shall

be construed to preclude EBGR from prosecuting any claim directly against the condemning authority for loss of its business or for the value of its leasehold estate.

28.05 Each Party shall provide prompt notice to the other Party of any eminent domain proceeding involving the Leased Premises. Each Party shall be entitled to participate in any such proceeding, at its own expense, and to consult with the other Party and its attorneys and experts. EBGR and the County shall make all reasonable efforts to cooperate with each other in the defense of such proceedings and to use their best efforts to ensure EBGR's continued ability to use the Leased Premises for the conduct of rail freight operations.

29. GENERAL NOTICE

All notices required pursuant to this Lease Agreement shall be in writing and addressed to the other Party at the address set forth below. All such notices shall be deemed duly given if personally delivered or if deposited in the United States mail, registered or certified, return receipt requested. This Section shall not be construed as waiving proper service of process. Notice to each Party will be to the following:

COUNTY OF BERKS:

Board of Commissioners
Berks County Services Center
633 Court Street, 13th Floor
Reading, PA 19601-4310

**EASTERN BERKS GATEWAY
RAILROAD COMPANY**

Eastern Berks Gateway
Railroad Company
548 Anita Street
Des Plaines, IL 60016

With copy to counsel:

James H. M. Savage, Esq.
John D. Heffner, PLLC
1750 K Street, NW – Suite 200
Washington, DC 20006
Tel. (202) 296-3333
Fax (202) 296-3939

30. SECTION AND PARAGRAPH HEADINGS

Section and paragraph headings in this Lease Agreement are for ease of reference only and shall have no bearing on the construction or interpretation of this Lease Agreement.

31. ENTIRE AGREEMENT

This Lease Agreement and the exhibits attached hereto set forth all the covenants, provisions, agreements, conditions and understandings between the Parties and all prior covenants, promises, agreements, conditions or understandings, either oral or written, between the Parties are hereby superseded and shall have no further effect. No modification or addition to this Lease Agreement shall be binding or effective unless executed in writing as an amendment to this Lease Agreement and signed by both Parties.

32. SEVERABILITY

If any provision of this Lease Agreement is held to be illegal, the remainder of this Lease Agreement shall remain operative and in full force and effect.

33. GOVERNING LAW, DISPUTE RESOLUTION, AND FORUM

33.01 This Lease Agreement and all rights of the Parties thereunder shall be governed and construed in accordance with applicable Federal law and the laws of the Commonwealth of Pennsylvania.

33.02 If at any time a question, dispute or controversy ("Dispute") shall arise between the Parties in connection with this Lease Agreement upon which the Parties cannot agree, before seeking judicial resolution of such Dispute, both Parties will engage in the dispute resolution process set forth in this Section.

(a) The County and EBGR initially shall attempt to resolve such Dispute through informal negotiations conducted by a Commissioner of the County and the President of EBGR. Either Party may request such negotiations by written notice to the other Party specifying the Dispute.

(b) If such Dispute cannot be resolved under subsection (a) of this Section within thirty (30) days of receipt of the written notice requesting such negotiations, or such longer time as the Parties may mutually agree upon, such Dispute shall be submitted to mediation by written notice of the Party seeking mediation to the other Party. In the mediation process, the County and EBGR shall attempt in good faith to resolve their differences voluntarily with the aid of an impartial mediator (who will attempt to facilitate negotiations). The mediator shall be selected by mutual agreement of the County and EBGR. If the County and EBGR cannot agree on a mediator, the American Arbitration Association or JAMS shall designate a mediator at the request of either Party. Any mediator so designated must be acceptable to both Parties. The mediation shall be confidential and the mediator may not testify for either Party in any later proceeding relating to the Dispute. Each Party shall bear its own costs in the mediation. The fees and expenses of the mediator shall be shared equally by the Parties.

(c) If such Dispute cannot be resolved under subsection (b) of this Section, after the conclusion of the mediation process and such Dispute arises out of this Lease Agreement under State law, such Dispute shall be submitted to arbitration under the Pennsylvania Arbitration Act, 42 Pa. C.S.A. § 7304, and brought in the Court of Common Pleas in Berks County, Pennsylvania. If the Dispute arises out of this Lease Agreement under Federal law, such Dispute shall be submitted to arbitration under the Federal Arbitration Act and shall be brought in the United States District Court for the Eastern District of Pennsylvania.

34. RIGHT TO PURCHASE LINE

34.01 At any time after the Lease Effective Date, EBGR shall have the option to purchase the Leased Premises. The purchase price for the Leased Premises shall be equal to the price paid by the County plus the cost of any capital improvements paid for by the County to the Leased Premises since such purchase. EBGR, at its sole cost and expense, shall obtain any necessary STB authority or exemption therefrom for its purchase of the Leased Premises. The sale agreement shall include a provision that provides the County with the option to repurchase the Leased Premises in the event that EBGR offers the Leased Premises for sale, at the offered price, or, in the event that EBGR receives a bonafide offer acceptable to EBGR from a prospective purchaser of the Leased Premises, at such offered price.

34.02 If at any time after purchasing the Leased Premises from the County, EBGR proposes to abandon the Line, EBGR shall provide the County with written notice thereof and the County shall have one hundred twenty (120) days to purchase the Leased Premises at a price equal to the price paid to the County by EBGR for the Leased Premises. In such event, the County, at its sole cost and expense, shall obtain any necessary STB authority or exemption therefrom for its purchase of the Leased Premises. Immediately upon EBGR accepting the County's offer to purchase the Line, EBGR shall request that the abandonment proceeding be held in abeyance pending negotiation of a Purchase and Sale Agreement ("PSA") and, upon execution of the PSA, shall withdraw its notice or petition for abandonment authority.

34.03 In the event that the County receives from a third party a bonafide offer acceptable to the County to purchase the Leased Premises, the County shall provide EBGR with written notice thereof and EBGR shall have one hundred twenty (120) days to purchase the Leased Premises at the price offered by such third party.

35. COUNTERPARTS

This Lease Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

36. MUTUAL COOPERATION

The Parties agree to mutually cooperate with each other's good faith efforts to obtain grant monies and funding from outside sources and programs for the purpose of improving the Leased Premises. Each Party shall make such good faith efforts upon the other Party's timely and reasonable request.

37. MARKETING

EBGR agrees that, during the Term of this Lease Agreement, it shall actively promote, advertise and market the availability of its rail freight services to the general public including but not limited to any and all past, anticipated or potential future rail freight service customers. As a public service, and not as a principal, agent, contractor, joint venturer or otherwise, the County may, at its discretion, but not as a requirement of this Lease Agreement, participate in or otherwise assist EBGR's marketing efforts, activities and initiatives.

38. LIABILITY FOR COMPLIANCE COSTS

Except as set forth in **SECTION 7.04**, EBGR, shall be solely liable for compliance costs associated with State or Federal mandates, laws, rules, or regulations concerning improvements to the tracks, right-of-way, crossings, wayside signals, warning devices and the like, switches, and bridges.

IN WITNESS WHEREOF, the Parties have caused this Lease Agreement to be duly executed on their behalf as of the day and year written on page one of this Lease Agreement.

**BERKS COUNTY
BOARD OF COMMISSIONERS**



By: Mark C. Scott, Esq.

Title: Chairman



By: Christian X. Leinbach

Title: Commissioner



By: Kevin S. Barnhardt

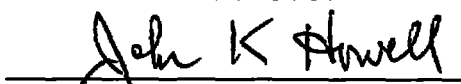
Title: Commissioner

APPROVED AS TO FORM:

John D. Heffner, PLLC
Of Counsel

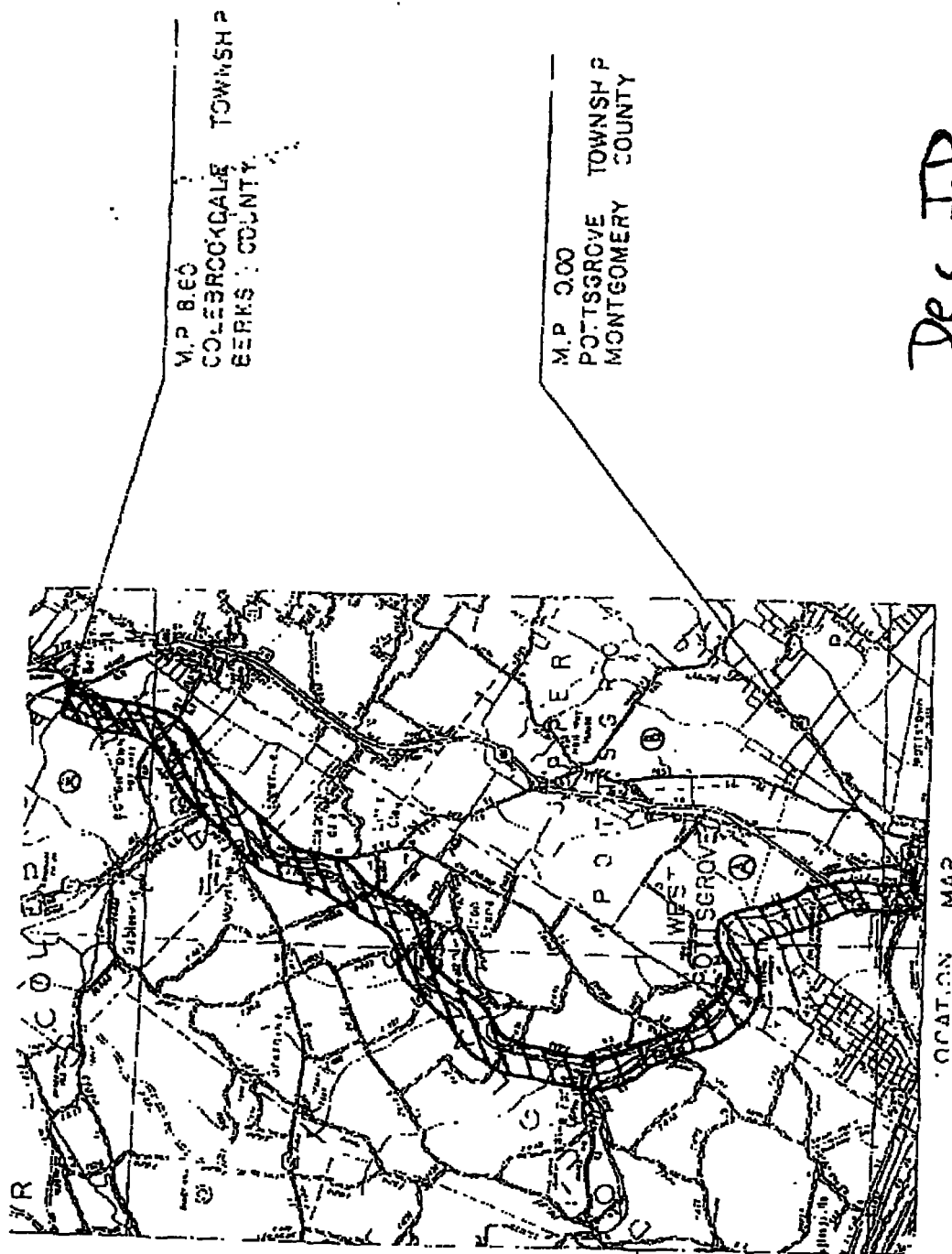
By: James H. M. Savage
Attorneys of Record
Berks County, PA

**EASTERN BERKS GATEWAY
RAILROAD COMPANY**



By:

Title: President



Dec ID
39265

Exhibit B – Property Description

The Leased Premises BEING the premises known as USR Line Number 909, the Colebrookdale Industrial Track, conveyed by the Pennsylvania Department of Transportation to the County of Berks by Agreement No. 82001 dated June 8, 2001 and the plan of the general location recorded in Deed Book 3368, page 1828 through 1831 in the Recorder of Deeds Office, Berks County, and Deed Book 5368, Pages 1789 through 1792 in the Recorder of Deeds Office, Montgomery County. USRA Line Number 909 is the same property which is the subject of the Agreement of Sale Number PC-1425-03 dated July 3, 2003 between County of Berks and Penn Eastern Rail Lines, Inc., except for the former Boyertown Rail Yard as more fully described in Exhibit B therein. Said property being the same property with is the subject of the Quit Claim Deed dated March 24, 2009 between East Penn Railroad, LLC and the County of Berks and recorded March 27, 2009 in Deed Book 5725, page 1105 by the Recorder of Deeds Office, Berks County, PA.

**ASTON****SURVEYORS/ENGINEERS, INC.**44 South Chestnut Street
Boyertown, PA 19312Phone: 610-367-6566
Fax: 610-369-0971
E-Mail: ase@dejazzd.com

September 15, 2008

BOYERTOWN RAIL YARD

All that certain parcel of land located on the Southeastly side of a 60 ft. wide Railroad property leading from Boyertown to Pottstown owned by Penn Eastern Rail Lines, Inc., the said property being located on the Northerly and Southerly side of E. Third Street (50 ft. wide) and on the Westerly side of S. Washington Street (50 ft. wide); in the Borough of Boyertown, Berks County, Pennsylvania, described according to a Perimeter Survey Plan of the Boyertown Rail Yard as prepared by Aston Surveyors/Engineers, Inc., Boyertown, Pennsylvania, plan no. 2053-BRYA dated September 15, 2008, and being more fully described as follows:

PURPART 1

Beginning at an iron pin set at the intersection of the Southeastly side of a 60 ft. wide Railroad property and the Northerly side of E. Third Street. Thence from the point of beginning, leaving the side of E. Third Street, along the Railroad property, the next two courses and distances to wit:

- 1.) North 54° 22' 57" East 328.10 ft. to an iron pin set, a corner.
- 2.) North 54° 46' 57" East 62.90 ft. to an iron pin set, a corner at the Southwesterly terminus of a 14 ft. wide alley.

Thence along the terminus of the 14 ft. wide alley, and thence along the center of a 16 ft. wide alley, along the land of Peter J. & Sandra L. Haberle, a 20 ft. wide alley, the land of Duffy Moon, L.L.C., and the land of Independence Properties, L.L.C., South 37° 21' 00" East 172.32 ft. to a mag nail set, a corner on the Westerly side of S. Washington Street.

Thence along the side of S. Washington Street, the next two courses and distances to wit:

- 1.) South 52° 08' 53" West 5.70 ft. to a mag nail set, a corner.
- 2.) South 48° 14' 08" West 361.95 ft. to an iron pin set, a corner at the intersection of the Northerly side of E. Third Street.

Thence along the side of E. Third Street, North 43° 47' 44" West 226.51 ft. to the point of beginning, the line passing over an iron pin set 26.51 ft. from the last mentioned point.

Containing 1.728 Acres (75,272 SQ. FT)

PURPART 2

Beginning at an iron pin set at the intersection of the Southeasterly side of a 60 ft. wide Railroad property and the Southerly side of E. Third Street, said point being located South 54° 47' 59" West 50.57 ft. along the Railroad property from the point of beginning of the above described Purpart 1. Thence from the point of beginning, along the Southerly side of E. Third Street, South 43° 47' 44" East 63.96 ft. to a mag nail set on the Westerly side of Pear Street (20 ft. wide).

Thence along the Westerly side of Pear Street, South 46° 21' 16" West 319.55 ft. to a mag nail set, a corner at the intersection of the Northerly side of Marion Street (20 ft. wide).

Thence along the Northerly side of Marion Street, North 43° 38' 44" West 109.59 ft. to a mag nail set on the Southeasterly side of the 60 ft. wide Railroad property.

Thence along the Railroad property the next two courses and distances to wit:

- 1.) Along a line curving to the left, having a central angle of 01° 57' 53" a radius of 985.37 ft., an arc length of 33.79 ft., a tangent of 16.90 ft., a chord bearing and distance of North 55° 21' 54" East 33.79 ft. to an iron pin set at a point of tangent.
- 2.) North 54° 22' 57" East 288.85 ft. to the point of beginning.

Containing 0.634 Acres (27,634 SQ. FT)

PURPART 1 and PURPART 2 (Parcel ID #33-5387-20-90-0435)

Being part of the same property as that which the County Of Berks, by a deed dated July 3, 2003 and recorded in deed book 3805 page 583 of the Berks County Records granted and conveyed unto Penn Eastern Rail Lines, Inc. The said deed is also recorded in deed book 5483 page 1676 of the Montgomery County Records.

Note: PURPART 1 and PURPART 2 (combined) as shown hereon are referred to as PARCEL NO. 17-5 in Highway Book 46 Pages 58 through 70 of the Montgomery County Records.



COUNTY OF BERKS, PENNSYLVANIA

Office of the Commissioners

Services Center, 13th Floor
633 Court Street
Reading, PA 19601

EXHIBIT D-1

Phone: 610.478.6136
Fax: 610.478.6293
E-mail: commissioners@countyofberks.com

Mark C. Scott, Esq., Commissioner Chair
Kevin S. Barnhardt, Commissioner
Christian Y. Leinbach, Commissioner

September 2, 2010 Alan S. Miller, Solicitor
Terry L. Styer, Chief Clerk

Regional Administrator, Region 2
Federal Railroad Administration
Baldwin Tower, Suite 660
1510 Chester Pike
Crum Lynne, PA 19022

Dear Sir:

In accordance with 49 CFR Part 213.5(c), the County of Berks, Pennsylvania ("County") gives notice that it has leased that section of railroad owned by the County and known as the Colebrookdale Rail Line (as further described below) to the Eastern Berks Gateway Railroad Company which will assume responsibility for maintaining the track on the Colebrookdale Spur on or about September 2, 2010.

As required by 49 CFR Part 213.5(c), we provide the following information:

- (1) Name and address of the track owner:

County of Berks
Berks County Services Center - 13th Floor
633 Court Street
Reading, PA 19601

- (2) Name and address of assignee:

Eastern Berks Gateway Railroad Company
548 Anita Street
Des Plaines, IL 60016

- (3) Exact relationship:

In accordance with the Lease dated September 2, 2010, the County leases to Eastern Berks Gateway Railroad Company the Colebrookdale Rail Line for a period of five (5) years, renewable for up to four (4) additional terms of five (5) years each.

- (4) Precise identification of the track:

Extending from a connection with Norfolk Southern Railway Company at Milepost 0.0 at Pottstown, PA, northward a distance of 8.6 miles to Milepost 8.6 at Boyertown, PA, known as the Colebrookdale Rail Line.

- (5) Statement of assignee's competence and ability to carry out the duties of track owner:

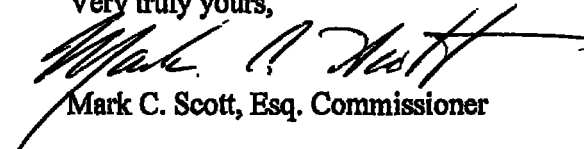
Eastern Berks Gateway Railroad Company is a subsidiary of Blackwell Northern Gateway Railroad Company, an Oklahoma corporation, which has operated a 38-mile railroad in the States of Oklahoma and Kansas for four and one-half years. Blackwell Northern Gateway Railroad Company is a subsidiary of US Rail Partners, Ltd., whose subsidiary Eastern Washington Gateway Railroad Company, a Washington corporation, has operated a 115-mile railroad in eastern Washington for approximately three years. Based on their experience in operating these other railroads, we find Eastern Berks Gateway Railroad Company to have the ability and the competence to carry out the duties of track owner under 49 CPR Part 213.

- (6) Assignee's acknowledgement of responsibility:

By virtue of the signature of its President below, Eastern Berks Gateway Railroad Company acknowledges the assignment of responsibility for track maintenance of the Colebrookdale Rail Line for purposes of compliance with 49 CPR Part 213.

If there are any questions regarding this matter, please do not hesitate to contact me.

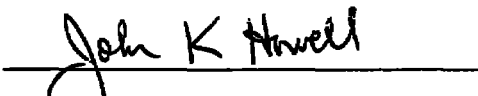
Very truly yours,



Mark C. Scott, Esq. Commissioner

Statement of assignee:

Eastern Berks Gateway Railroad Company acknowledges the assignment of responsibility for track maintenance of the Colebrookdale Rail Line for purposes of compliance with 49 CPR Part 213.



John K. Howell, President
Eastern Berks Gateway Railroad Company

Dated: September 2, 2010



COUNTY OF BERKS, PENNSYLVANIA

Office of the Commissioners

Services Center, 13th Floor
633 Court Street
Reading, PA 19601

EXHIBIT D-2

Phone: 610.478.6136
Fax: 610.478.6293
E-mail: commissioners@countyofberks.com

Mark C. Scott, Esq., Commissioner Chair
Kevin S. Barnhardt, Commissioner
Christian Y. Leinbach, Commissioner

September 2, 2010 Alan S. Miller, Solicitor
Terry L. Styer, Chief Clerk

Regional Administrator, Region 2
Federal Railroad Administration
Baldwin Tower, Suite 660
1510 Chester Pike
Crum Lynne, PA 19022

Dear Sir:

In accordance with 49 CFR Part 237.3, the County of Berks, Pennsylvania ("County") gives notice that it has leased that section of railroad owned by the County and known as the Colebrookdale Rail Line (as further described below) to the Eastern Berks Gateway Railroad Company which will assume responsibility for inspecting and maintaining the bridges on the Colebrookdale Spur on or about September 2, 2010.

As required by 49 CFR Part 237.3(b), we provide the following information:

- (1) Name and address of the track owner:

County of Berks
Berks County Services Center - 13th Floor
633 Court Street
Reading, PA 19601

- (2) Name and address of assignee:

Eastern Berks Gateway Railroad Company
548 Anita Street
Des Plaines, IL 60016

- (3) Exact relationship:

In accordance with the Lease dated September 2, 2010, the County leases to Eastern Berks Gateway Railroad Company the Colebrookdale Rail Line for a period of five (5) years, renewable for up to four (4) additional terms of five (5) years each.

- (4) Precise identification of the track segment and individual bridges:

Extending from a connection with Norfolk Southern Railway Company at Milepost 0.0 at Pottstown, PA, northward a distance of 8.6 miles to Milepost 8.6 at Boyertown, PA, known as the Colebrookdale Rail Line.

A Rider listing all bridges on the line is annexed hereto and made a part hereof as Rider A.

- (5) Statement of assignee's competence and ability to carry out the bridge safety duties of track owner:

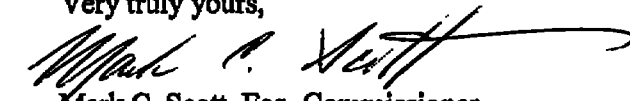
Eastern Berks Gateway Railroad Company is a subsidiary of Blackwell Northern Gateway Railroad Company, an Oklahoma corporation, which has operated a 38-mile railroad in the States of Oklahoma and Kansas for four and one-half years. Blackwell Northern Gateway Railroad Company is a subsidiary of US Rail Partners, Ltd., whose subsidiary Eastern Washington Gateway Railroad Company, a Washington corporation, has operated a 115-mile railroad in eastern Washington for approximately three years. Based on their experience in operating these other railroads, we find Eastern Berks Gateway Railroad Company to have the ability and the competence to carry out the duties of track owner under 49 CPR Part 237.3.

- (6) Assignee's acknowledgement of responsibility:

By virtue of the signature of its President below, Eastern Berks Gateway Railroad Company acknowledges the assignment of responsibility for bridge safety of the Colebrookdale Rail Line for purposes of compliance with 49 CPR Part 237.3.

If there are any questions regarding this matter, please do not hesitate to contact me.

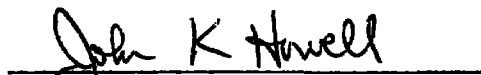
Very truly yours,



Mark C. Scott, Esq. Commissioner

Statement of assignee:

Eastern Berks Gateway Railroad Company acknowledges the assignment of responsibility for bridge maintenance of the Colebrookdale Rail Line for purposes of compliance with 49 CPR Part 213.



Dated: September 2, 2010

John K. Howell, President
Eastern Berks Gateway Railroad Company

RIDER A

<u>Municipality</u>	<u>Milepost</u>	<u>Length</u>	<u>Type</u>
Pottstown	0.08	117'0"	Open Deck
Pottstown	1.30	17'6"	Steel Beam
Pottstown	2.12	27'0"	Concrete Slab
Pine Forge	3.48	225'0"	Stone Arch & Steel Girder
Pine Forge	3.54	18'6"	Steel Beam
Pine Forge	3.74	144'0"	Timber Trestle
Pine Forge	4.21	115'0"	Timber Trestle
Colebrookdale	5.04	28'0"	Steel Beam
Colebrookdale	6.98	30'0"	Plate Deck
Boyertown	7.30	149'10"	Riveted Truss
Boyertown	7.37	56'6"	Steel Beam
Boyertown	8.31	45'0"	Thru Deck Girder

**FIRST AMENDMENT
TO
LEASE AND OPERATING AGREEMENT**

THIS FIRST AMENDMENT TO LEASE AND OPERATING AGREEMENT
("First Amendment"), dated as of the 9th day of September, 2010 is by and between **BERKS COUNTY**
(the "County"), and **EASTERN BERKS GATEWAY RAILROAD COMPANY ("EBGR")**.

WHEREAS, the County and EBGR have entered into that certain Lease and Operating Agreement dated September 2, 2010 (the "Lease") wherein the County leased to EBGR and EBGR leased from the County the rail line owned by the County known as the Colebrookdale Line as defined in the Lease; and

WHEREAS, the County and EBGR have agreed to amend Section 4.01 of the Lease to provide for a different effective date for the Lease and to add an additional sentence to Section 22.03(b) of the Lease.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the County and EBGR agree as follows:

1. Effective on the date of this First Amendment, Section 4.01 of the Lease is hereby amended to read as follows:

4.01 This Lease Agreement shall become effective on the date of this First Amendment ("Lease Effective Date") and shall have a term of five (5) years from the Lease Effective Date and, provided that the provisions of this Lease Agreement have been fully and faithfully performed by EBGR during the preceding term, shall thereafter automatically be extended for one (1) additional five-year term unless terminated prior to the expiration thereof in accordance with the terms of this Lease Agreement. The initial five-year term and any extension thereof shall collectively be referred to herein as the "Term" of this Lease Agreement.

2. Effective on the date of this First Amendment, the following sentence shall be inserted at the end of Section 22.03(b) of the Lease:

Notwithstanding the provisions of this Section 22.03(b), between the Lease Effective Date and the date on which grade crossing signs and markings meeting the standards set forth in Chapter 8B of the Manual on Uniform Traffic Control Devices are in place at each of the rail-highway grade crossings on the

Colebrookdale Line where applicable, EBGR shall protect, defend, save harmless, indemnify and reimburse the County from and against any and all Costs incurred by the County for any negligence, including gross negligence, of the County related to the absence of such grade crossing signs and markings or non-compliance of such grade crossing signs and markings with such standards and resulting from EBGR's use, occupancy or maintenance of the Leased Premises during such period.

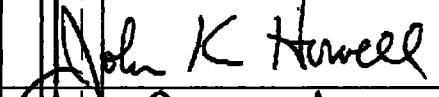
3. Capitalized terms in this First Amendment shall have the meaning set forth in the Lease.

IN WITNESS WHEREOF, the County and EBGR have caused this First Amendment to be duly executed on their behalf as of the day and year written above.

**BERKS COUNTY
BOARD OF COMMISSIONERS**

By: 
Its: Chairman

**EASTERN BERKS GATEWAY
RAILROAD COMPANY**

By: 
Its: President